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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/600,022
Filing Date: June 19, 2003
Appellant(s): GERBERDING ET AL.

Joshua L. Cohen
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 7/16/2009 appealing from the Office action
mailed 11/12/2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2004/0044339	VENTURA	3-2004
2002/0095205	EDWIN ET AL.	7-2002
2002/0193867	GLADDISH, JR. ET AL.	12-2002

6,488,701

NOLTING ET AL.

12-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-4, 7, 9-13, 16-20, 32-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ventura (2004/0044399), in view of Edwin et al (20020095205).
3. Ventura et al discloses radiopaque markers in combination with a stent comprising struts having serpentine bands, linear connector struts, and axially aligned apices. Ventura discloses marker placement at the connecting strut. Ventura is silent to the framework having an outer and inner covering of PTFE.
4. Edwin et al teaches the combination of a stent comprising a tubular framework having an outer surface and an inner surface and a plurality of interconnected struts, an outer covering of PTFE and an inner covering of PTFE, the outer covering extending along at least a portion of the outer surface of the expandable framework, the inner covering extending along at least a portion of the inner surface of the expandable framework, at least a portion of the inner and outer coverings being contiguous, the combination further comprising at least one radiopaque marker. See illustrations of figures 3-5 and corresponding supporting portions of the specification. To provide an inner and outer covering of ePTFE to the serpentine frame of Ventura et al to provide

better compatibility and tissue response would have been obvious from the teachings of Edwin et al.

5. The serpentine band of Ventura is an undulating waveform with symmetric "peaks" and "troughs." The peaks and troughs are arbitrarily assigned as alternate portions of the waveform, although nothing structurally distinguishes a peak from a trough other than the designation of being at the top or bottom of a wave. Because the selection of a peak vs. a trough is arbitrary, Ventura discloses adjacent serpentine bands with peak-to-trough connections, because the designation of peak and trough need not be uniform in adjacent serpentine bands (although examiner contends that - within each serpentine band, the peaks are all opposing troughs). Such a designation is not implied by the term "peak" or the term "trough" nor is it inherent in the definition of peak or trough. With respect to claim 33, "adjacent serpentine bands having axially aligned oppositely pointing apices" does not exclude the interpretation as adjacent serpentine bands, the bands being axially aligned and having oppositely pointing apices. Therefore Ventura discloses adjacent serpentine bands having axially aligned oppositely pointing apices.

6. Regarding claims 2,3,4, 7, 10-13,20,32-36, see figures 3-5 and specification, paragraphs [0021-0027] of Edwin, et al.

7. Claims 16-19 see para 7 and 34 of Ventura

Art Unit: 3774

8. Claims **5-6** and **8** are rejected under 35 U.S.C. 103(a) as being unpatentable over Ventura (2004/0044399) in view of Edwin et al (20020095205) as applied above, and further in view of Gladdish, Jr. et al (20020193867).

9. Ventura in view of Edwin is explained *supra*. However, the references are silent as to whether the radiopaque marker band is crimped on to the stent, embedded in a portion of the stent framework, or a radiopaque plug inserted into an opening in the stent framework. Gladdish teaches crimping, embedding, and inserting a plug into an opening (fig 7 and para 25). Examiner considers the teaching of an interference fit for the radiopaque marker of Gladdish to be a teaching for "crimping", since the radiopaque marker is squeezed or crimped into the housing.

10. To apply the marker to the stent of Ventura in view of Edwin via crimping, embedding and inserting a plug into an opening as taught by Gladdish would have been obvious to one with ordinary skill in the art at the time the invention was made for the purpose of creating a secure connection of the radiopaque marker.

11. Claims **14** and **15** are rejected under 35 U.S.C. 103(a) as being unpatentable over Ventura (2004/0044399) in view of Edwin et al (20020095205) as applied above, further in view of Nolting et al (6488701).

12. The use of stents for correcting cerebral vasculature is taught by Nolting, et al. If not inherent in Ventura et al (The stent of Ventura et al is capable of being placed into a cranial vessel of any animal including rabbits, primates and elephants) and Edwin et al

to employ a stent to correct aneurysm would have been obvious to one with ordinary skill in the art based on medical considerations.

(10) Response to Argument

1. Appellant's arguments have been fully considered but they are not persuasive.

Appellant argues that the stent of Ventura lacks a peak-to-trough connection between adjacent serpentine bands. This is not persuasive. The serpentine band of Ventura is an undulating waveform with symmetric "peaks" and "troughs." The peaks and troughs are arbitrarily assigned as alternate portions of the waveform, although nothing structurally distinguishes a peak from a trough other than the designation of being at the top or bottom of a wave. Because the selection of a peak vs. a trough is arbitrary, Ventura discloses adjacent serpentine bands with peak-to-trough connections, because the designation of peak and trough need not be uniform in adjacent serpentine bands (although examiner contends that within each serpentine band, the peaks are all opposing troughs). Such a designation is not implied by the term "peak" or the term "trough" nor is it inherent in the definition of peak or trough.

2. Appellant argues that this interpretation is not the broadest reasonable interpretation in light of the specification, in part because the specification discloses a peak that points in one direction and a trough that points in the opposite direction from the peak. Examiner agrees that a peak points in one direction and a trough points in the opposite direction of the peak, *within the same ring*. The specification does not define the limitations "peak" and "trough" with any further specificity (most importantly, the specification does not specify that the designation of peak and trough *must* be uniform

in adjacent serpentine bands). In fact, requiring that adjacent serpentine bands have the same designation of "peak" and "trough" would be *importing limitations from the specification into the claims unnecessarily*. Therefore, Examiner's interpretation is proper and based upon the broadest reasonable interpretation of the claims, in light of the specification.

3. Appellant further argues that Ventura lacks axially aligned and oppositely pointing apices. However, the claimed limitation "adjacent serpentine bands having axially aligned oppositely pointing apices" does not exclude the interpretation as adjacent serpentine bands, the bands being axially aligned and having oppositely pointing apices. Therefore Ventura discloses adjacent serpentine bands having axially aligned oppositely pointing apices.

4. Appellant argues that this interpretation is not the broadest reasonable interpretation in light of the specification, in part because the specification supports the interpretation of adjacent serpentine bands that have oppositely pointing aligned apices. However, limitations from the specification should not be imported into the claims. Examiner contends that the interpretation of the limitation of "adjacent serpentine bands having axially aligned oppositely pointing apices" as adjacent bands being axially aligned and having oppositely pointing apices is a proper interpretation of the limitation, which highlights the ambiguity of the claimed limitation.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Suba Ganesan/

Examiner, Art Unit 3774

Conferees:

/DAVID ISABELLA/

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